IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FEDERAL TRADE COMMISSION, Plaintiff, v. IFC CREDIT CORPORATION, Defendant.	Case No. 07 C 3155 **SETTLEMENT AGREEMENT ORDER**

Plaintiff, the Federal Trade Commission ("FTC" or "Commission"), filed its Complaint for a permanent injunction and other relief pursuant to Section 13(b) of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. § 53(b). The Commission and IFC Credit Corporation ("IFC") have conferred through counsel and agreed to settlement of this action and entry of this Settlement Agreement Order ("Settlement Order") without final adjudication of any issue of law or fact herein. This agreement and Settlement Order are entered into solely for the purpose of resolving this action and are not intended to be used for any other purpose. This agreement and Settlement Order resolve all matters arising from the allegations in the Complaint. The Commission and IFC consent to entry of this Settlement Order.

NOW THEREFORE, the Commission and IFC, having requested the Court to enter this Settlement Order, it is ORDERED, ADJUDGED, AND DECREED as follows:

FINDINGS

A. This is an action by the Commission instituted under Section 13(b) of the FTC Act, 15 U.S.C. § 53(b). Pursuant to this section, the Commission has the authority to seek the relief contained herein.

B. This Court has jurisdiction over the subject matter of this case and all parties hereto. Venue in the Northern District of Illinois, Eastern Division is proper.

C. The alleged activities of IFC are in or affecting commerce, as defined in Section 4 of the FTC Act, 15 U.S.C. § 44.

D. The parties shall each bear their own costs and attorneys' fees incurred in this action and have waived all claims under the Equal Access to Justice Act, 28 U.S.C. § 2412, *amended by* Pub. L. 104-121, 110 Stat. 847, 863-64 (1996), and all rights to seek judicial review or otherwise to challenge the validity of this Settlement Order.

E. This Settlement Order does not constitute, and shall not be interpreted or claimed to constitute, either an admission by IFC or a finding by the Court that IFC has engaged in any violations of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), or any other law or regulation, or has committed any wrongdoing. IFC specifically denies violating the FTC Act or any other law or regulation or committing any wrongdoing, and IFC states that it has consented to settle solely to avoid the cost and burden of litigation.

F. Entry of this Settlement Order is in the public interest.

DEFINITIONS

For purposes of this Settlement Order, the following definitions shall apply:

1. "IFC" means IFC Credit Corporation and its successors and assigns.

2. "Financing" or "finance contract" means any financing arrangement, whether styled as a contract, lease, rental, or otherwise having total gross payments of $250,000 or less. For purposes of this Settlement Order, the term "financing" includes any debt collection activities related to financing.

I. GENERAL PROHIBITIONS

IT IS THEREFORE ORDERED that IFC and its officers, agents, servants, and employees, and those persons in active concert or participation with them who receive actual notice of this Settlement Order by personal service or otherwise, whether acting directly or through any person, trust, corporation, limited liability company, subsidiary, division, or other device, in connection with providing any financing, are hereby permanently restrained and enjoined from:

A. Misrepresenting, expressly or by implication:

1. that the customers have waived any defenses, or are precluded from raising any defenses or counterclaims, to IFC's collection on a finance contract; or
2. that customers are obligated to pay IFC under any other theory of liability, including but not limited to fraud or misrepresentation;

provided, however, that this Subsection A shall not apply to oral or written representations made to a court in connection with litigation.

B. Taking any action to collect on a finance contract when, based on the information IFC was aware of at the time it acquired the finance contract, a reasonable businessperson in the financing industry would conclude that:

1. the finance contract materially misstated the consideration to be received by the customer; or

2. the finance contract was procured by deception;

provided, however, that this Subsection B shall not apply to 1) litigation between IFC and any of its NorVergence customers who decline the settlement offer IFC makes pursuant to the settlements IFC has entered into with state attorneys general, 2) litigation between IFC and any NorVergence customer who has executed a settlement with IFC and has not complied with the terms of the settlement, or 3) litigation brought against IFC by any NorVergence customer.

II. COMPLIANCE MONITORING

IT IS FURTHER ORDERED that, for the purpose of monitoring and investigating compliance with any provision of this Settlement Order:

A. Within ten (10) days of receipt of written notice from a representative of the Commission, IFC shall submit additional written reports, sworn to under penalty of perjury; produce documents for inspection and copying; appear for deposition; and/or provide entry during normal business hours to any business location in IFC's possession, or direct or indirect control, to inspect the business operation.

B. In addition, the Commission is authorized to monitor compliance with this Settlement Order by all other lawful means including, but not limited to, obtaining discovery from any person, without further leave of court, using the procedures prescribed by Fed. R. Civ. P. 30, 31, 33, 34, 36, and 45.

C. IFC shall permit representatives of the Commission to interview any employer, consultant, independent contractor, representative, agent, or employee who has agreed to such an interview, relating in any way to any conduct subject to this Settlement Order. The person interviewed may have counsel present.

Provided, however, that nothing in this Settlement Order shall limit the Commission's lawful use of compulsory process, pursuant to Sections 9 and 20 of the FTC Act, 15 U.S.C. §§ 49 and 57b-1, to obtain any documentary material, tangible things, testimony, or information relevant to unfair or deceptive acts or practices in or affecting commerce (within the meaning of 15 U.S.C. § 45(a)(1)).

III. COMPLIANCE REPORTING

IT IS FURTHER ORDERED that, in order that compliance with the provisions of this Settlement Order may be monitored:

A. For a period of three (3) years from the date of entry of this Settlement Order, IFC shall notify the Commission of any changes in corporate structure that may affect compliance obligations arising under this Settlement Order including, but not limited to, a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor entity; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this Settlement Order; the filing of a bankruptcy petition; or a change in the corporate name and address, at least thirty (30) days prior to such change, *provided* that, with respect to any such change in the corporation about which IFC learns less than thirty (30) days prior to the date such action is to take place, IFC shall notify the Commission as soon as practicable after obtaining such knowledge.

B. One hundred eighty (180) days after the date of entry of this Settlement Order, IFC shall provide a written report to the FTC, sworn to under penalty of perjury, setting forth in detail the manner and form in which it has complied and is complying with this Settlement Order. This report shall include, but not be limited to:

1. a copy of each acknowledgment of receipt of this Settlement Order obtained pursuant to Section V of this Settlement Order; and

2. any other changes required to be reported under subparagraph A of this Section.

C. For the purposes of this Settlement Order, IFC shall, unless otherwise directed by the Commission's authorized representatives, send by overnight courier all reports and notifications required by this Settlement Order to the Commission, to the following address:

Associate Director for Enforcement
Federal Trade Commission
601 New Jersey Ave., N.W.
Washington, DC 20580
Re: FTC v. IFC Credit Corporation, 07 C 3155

Provided that, in lieu of overnight courier, IFC may send such reports or notifications by first-class mail, but only if IFC contemporaneously sends an electronic version of such report or notification to the Commission at: DEBrief@ftc.gov.

IV. RECORD KEEPING

IT IS FURTHER ORDERED that, for a period of six (6) years from the date of entry of this Settlement Order, IFC, in connection with providing any financing, is hereby restrained and enjoined from failing to create and retain the following records:

A. Accounting records that reflect revenues generated and the disbursement of such revenues.

B. Personnel records accurately reflecting: the name, address, and telephone number of each person employed by IFC, including as an independent contractor, in a non-clerical function relating to sales, vendor processing and approval, customer processing and approval, document processing, customer service, legal, or collections; that person's job title or position; the date upon which the person commenced work; and the date and reason for the person's termination, if applicable.

C. Customer files containing the names, addresses, telephone numbers, dollar amounts paid, quantity of items or services financed, and description of items or services financed, to the extent such information is obtained in the ordinary course of business.

D. Customer complaints (whether received directly, indirectly or through any third party) relating to the subject matter of this Order, and any responses to those complaints.

E. Copies of all scripts relating to the subject matter of this Order that are used for communicating with customers, and all training materials relating to such customer contacts.

F. All records and documents necessary to demonstrate full compliance with each provision of this Settlement Order including, but not limited to, copies of acknowledgments of receipt of this Settlement Order required by Section V of this Settlement Order, and all reports submitted to the FTC pursuant to Sections II and III of this Settlement Order.

V. DISTRIBUTION OF SETTLEMENT ORDER

IT IS FURTHER ORDERED that, for a period of three (3) years from the date of entry of this Settlement Order, IFC shall deliver copies of this Settlement Order as directed below:

A. IFC must deliver a copy of this Settlement Order to all of its principals, officers, directors, and managers. IFC also must deliver copies of this Settlement Order to all of its employees, agents, and representatives who engage in a non-clerical function relating to sales, vendor processing and approval, customer processing and approval, document processing, customer service, legal, or collections. For current personnel, delivery shall be within five (5) days of service of this Settlement Order upon IFC. For new personnel, delivery shall occur prior to their assumption of responsibilities.

B. IFC must secure a signed and dated statement acknowledging receipt of this Settlement Order, within thirty (30) days of delivery, from all persons receiving a copy of the Settlement Order pursuant to this Section.

VI. ACKNOWLEDGMENT OF RECEIPT OF SETTLEMENT ORDER

IT IS FURTHER ORDERED that IFC, within five (5) business days of receipt of this Settlement Order as entered by the Court, must submit to the Commission a truthful sworn statement acknowledging receipt of this Settlement Order.

VII. RETENTION OF JURISDICTION

IT IS FURTHER ORDERED that this Court shall retain jurisdiction of this matter for purposes of construction, modification, and enforcement of this Settlement Order.

SO ORDERED, this 4 day of November 2008

The Honorable Jeffrey Cole
UNITED STATES MAGISTRATE JUDGE

FOR IFC CREDIT CORPORATION

Dated: October 31, 2008

IFC CREDIT CORPORATION
BY:

Beth Anne Alcantar
Attorney for IFC Credit Corporation

FOR FEDERAL TRADE COMMISSION

Dated: October 31, 2008

Robert J. Schroeder

ROBERT J. SCHROEDER
DAVID M. HORN
MAXINE R. STANSELL
Attorneys for the Federal Trade Commission
915 Second Avenue, Suite 2896
Seattle, Washington 98174
(206) 220-6350